

**MAKING
RIGHTS
REAL**

***Human Rights Bill for Scotland Consultation:
A People's Response***

by Making Rights Real

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www.makingrightsreal.org.uk

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Making Rights Real is a charity registered in Scotland with Charity
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About Making Rights Real

Making Rights Real (MRR) is a grassroots human rights organisation that supports communities to name and claim their rights. We work alongside communities experiencing human rights issues, especially working with communities who have been marginalised by laws, policies, practices or public authorities. We support communities to use the power of human rights as a practical tool to make economic and social change happen. We support communities to develop their own methods to tackle injustice.

One of MRR's core aims is to amplify the voices of those who are furthest from the table, and those who are experiencing human rights violations.

Our focus is working alongside people across Scotland who are experiencing human rights violations, who are experts in their own lives and communities - they know what change needs to happen to make their rights real.

Our response to this consultation

MRR is a member of the Human Rights Consortium Scotland (HRCS), and we are signatories to their consultation response.

We held an open online event in September 2023, inviting human rights defenders, activists and people we are working alongside to share their opinions and answer the questions set out in this consultation. This response supplements the HRCS response and deliberately and predominately uses participants' own words.

It is vital that the voices of rights holders are central to shaping this legislation, since this law will make the most impact for people whose rights are being violated most.

Participants' words are in italics and quotation marks - and in blue boxes for ease of reference.

We will not answer every question. For some sections, we have included general comments that apply to the whole theme, rather than a particular question.

A word on the consultation process

The consultation was difficult for many rights holders to access. The language and complexity of the Bill was off-putting, however the easy read and children's versions of the Bill were seen as more accessible and welcomed.

The timing of the Bill's consultation was difficult for rights holders. All the communities we are working alongside at the grassroots were not meeting over the summer, effectively ruling out the first 6-8 weeks of the consultation period.

A longer timeframe would have been welcomed and we advise not to consult over Christmas or summer, unless the time period is extended.

1.0 General statement

MRR fully support aims set out on pages 9 and 10 of the consultation paper.

If successful, this Bill would go a long way to reducing the systemic human rights violations people in Scotland experience on a daily basis. These aims are particularly laudable when set against the UK Government's threats and rhetoric around regression of human rights.

"This Bill overall has the potential to transform the lives of people experiencing human rights breaches."

"We have just seen massive regression on Human Rights at a UK level. The Scottish Government's commitments are positive in comparison."

"We've just seen Human Rights go very significantly backwards at a UK level, so this at least is looking in the right direction."

In the *All Our Rights in Law* consultation,¹ when participants were asked "What is your final message for the National Taskforce and the Scottish Government?," the top answers were:

- *People need to know and understand their rights; and*
- *People shouldn't need to fight for their rights to make change happen.*

MRR's capacity building and community consultation work, the *All Our Rights in Law* report and the expertise gathered by the Lived Experience Boards all confirm the urgent need for the Scottish Government to bring a robust Human Rights Bill into force. This evidence supports these stated aims:

"Provide a clear, robust and accessible legal framework that ensures:

¹ [About - All Our Rights In Law](#)

- All rights-holders in Scotland can understand and claim international human rights domestically; and that
- All duty-bearers will better implement rights in practice, respond appropriately to rights issues as they arise, and be held to account when things go wrong.
- Create and promote a multi-institutional approach so that institutions in Scotland – Government, Parliament, public bodies, courts and independent scrutiny bodies – can work together to ensure rights are upheld and create a human rights culture.
- Ensure there are routes to remedy available for when there has been an individual or systemic infringement of people’s human rights and that the remedies are accessible, affordable, timely and effective.
- Through the Bill and wider work, continue to build a human rights culture where duty-bearers place rights at the heart of their decision making, people understand what their rights are and how to access them, and together we build a society where everyone is able to live with fundamental human dignity.”²

The complications of the devolution settlement, whilst presenting a challenge, should not constrain or dictate this process.

The Scottish Government must aim high and take a maximalist approach, learning from UNCRC jurisprudence to best mitigate against the possibility of a legal challenge. Scotland is blessed with a wealth of human rights experts - academics, civil society and voluntary organisations, the legal profession, civil servants and people with lived experience of human rights violations. Bringing these groups together to work on the detail and wording of the Bill will reduce the likelihood of legal challenge - risk must not temper ambition here.

As members of the Human Rights Consortium Scotland (HRCS), we echo their statement:

² [*human-rights-bill-scotland-consultation-june.pdf \(www.gov.scot\)](https://www.gov.scot/publications/human-rights-bill-scotland-consultation-june-2019/pages/9-10/), page 9 and 10

“Bringing more of our international human rights directly into Scots law therefore must be more than a tick box or empty promises exercise- it must bring change.”³

In particular, we echo HRCS’s four overarching key responses, namely that the consultation:

- *“Could do better”*
- *that “more work is required”*
- *that the Scottish Government must “show their workings” and*
- *that change “must arrive on time.”⁴*

2.0 Part 4 of the Bill: Incorporating the Treaty Rights

1. What are your views on our proposal to allow for dignity to be considered by courts in interpreting the rights in the Bill?

Human dignity should be included in the Bill as part of a ‘purpose’ clause and courts should be **obliged** to consider it in their interpretation. Dignity is interconnected with other key human rights principles such as universality and participation.

Dignity should not only be defined by judges or Ministers but by people whose rights have been violated. The example set out below are just one of many indignities regularly suffered by some disabled people.

“By the time they get justice, their dignity is in tatters.”

“Who decides what dignity is? Shouldn’t be subject to someone else’s idea of what’s a dignified life. For example, someone looking for support to go to the toilet in the night - in that case the judge and court decided that [it] was fine

³ <https://hrcscotland.org/wp-content/uploads/2023/08/Final-HRCS-Guide-to-responding-to-Human-Rights-Bill-for-Scotland-consultation-August-2023-1.pdf>, page 10

⁴ *ibid.* 3, page 11

for her to sit in her own waste in a nappy over-night - that's not what I call dignity."

"Concern about concept of dignity - how is that defined? This is a big worry for disabled people."

2. What are your views on our proposal to allow for dignity to be a key threshold for defining the content of MCOs?

"We need rights to have clarity around 'minimum core'."

"We need clear and accessible systems that shift power to individuals and communities."

We agree with the proposal for dignity to be a key threshold for defining Minimum Core Obligations.

Rights holders have a crucial role to play in defining what reinforces or impinges on their dignity. Making Rights Real's work is rooted in using a human rights based approach in practice and was founded on the principles and groundbreaking work of Belfast based organisation Participation and the Practice of Rights (PPR). PPR have developed a methodology and practice of rights holders naming and claiming their rights, and using human rights-based approaches to make changes that are important to rights holders.

In September 2023, residents of the Double Dykes Travellers' site in Perth and Kinross launched their report *"Our Rights Matter"*.⁵ Making Rights Real has worked with Manging Manishes (an organisation run by and for Travellers) and residents for over a year, listening to their concerns, sharing information about human rights and supporting residents to increase their confidence and capacity in using human rights as tool for change.

Residents were able to use the language of human rights to carry out participatory action research. Residents then used

⁵ This report will be available on our website soon.

survey results to set out how duty holders were breaching their human rights and have set indicators to demonstrate what they want to see changed.

The indicators are in these themed areas:

1. Children's rights and safety
2. Right to accommodation
3. Repairs response by Perth and Kinross Council
4. Right to participate
5. Right to live free from discrimination.

Crucially, these indicators have been set by residents and are based on what is most important to residents, not what duty bearers or external organisations consider important.

Residents are now human rights monitors.

Residents at Double Dykes, along with residents from the Bobbin Mill site in Pitlochry, hosted an event led by Travellers in September 2023, calling out human rights violations and inviting duty bearers to attend and respond.

This example is important because it demonstrates that people living with human rights violations are fundamentally about violations of dignity. As experts in their own lives, rights holders should play a central part in stating what dignity is from their viewpoint. Their definitions should be used to be set down MCOs and play a part in accountability, monitoring and enforcement processes. Dignity is much wider than the court and judicial processes.

The participation of rights holders is absolutely vital in setting Minimum Core Obligations.

5. Are there any rights in the equality treaties which you think should be treated differently? If so, please identify these, explain why and how this could be achieved.

"Anything that can help disabled people will help everybody else as well - incorporation at least need to have duty to comply with standalone CRPD rights; should be non-discrimination clause as well."

3.0 Part 5 of the Bill: Recognising the Right to a Healthy Environment

We support the inclusion of the right to a healthy environment. We endorse the Environmental Rights Centre for Scotland's work highlighting the importance of this right, and in particular the lack of effective remedy experienced by rights holders, in breach of the Aarhus Convention. Without a healthy environment, many other rights fall. The importance of green spaces was noted in the *Our Rights Matter* report,⁶ which feeds into the children's right to play, right to health etc.

"I would like to see the right to food security, such as everyone having outdoor space and resources in all housing to grow your own food and wider provision of allotments.

The right to play and green space - housing developers should be required to create large enough outdoor spaces where people can properly kick a ball about.

The right to live without damp - housing developers have to incorporate drying greens/balconies where people can dry their laundry outdoors to prevent damp in their homes."

4.0 Part 6 of the Bill: Incorporating Further Rights and Embedding Equality

13. How can we best embed participation in the framework of the Bill?

"Participation in public affairs is a fundamental human right and an underutilised tool for better policy making. It deepens our understanding of issues and helps identify better solutions. It ensures that concerns are heard, reducing social tension... It leads to a greater sense of ownership, allowing effective implementation. It can be the difference between progress and disarray." Secretary-General Antonio Guterres at the UN General Assembly, 25 September 2020

⁶ *ibid.*

Participation is crucial to enabling a rights-based approach.

"[It is] important that lived experience voices are listened to."

"Would participatory process involve lived experience? When talking about a Patient Safety Commissioner, there is already some legal standards around participation in healthcare policy so maybe that's something to build on?"

"Can we use the national standards for community engagement to hold duty bearers to account?"

16. Do you agree or disagree that the use of 'other status' in the equality provision would sufficiently protect the rights of LGBTI and older people?

"LGBTI and older people; should be named on the Bill - unless you're making things specific and [stipulating] what should be done specifically, it can be ignored; they can say 'that's not what we agreed to'."

5.0 Part 7 of the Bill: The Duties

19. What is your view on who the duties in the Bill should apply to?

The duties in the Bill should apply to everyone. If the duty to comply does not cover CEDAW, CRPD or CERD, the Bill will have failed in its stated aims.

The Bill will not reach its fullest extent within devolved capabilities unless there is a duty to comply, excepting reserved powers/ duties.

"The 'duty to comply' doesn't cover CEDAW, CRPD or CERD - this is concerning. We are wary of the entanglement with the Equality Act as a way of the Bill 'getting out' of equality clauses. It's not fair that some groups will have their rights fully protected whilst others will not. I thought human rights are meant to be equally for everyone?"

20. What is your view on the proposed initial procedural duty intended to embed rights in decision making?

This is a good starting point and will be part of process of educating and persuading duty holders about their human rights responsibilities.

21. What is your view on the proposed duty to comply?

“Duty to comply is really strong. There is real potential if we get that strength of duties in there, culture shift required needs resources, attention to detail at implementation etc.”

“Most important gap is about disability- [the Scottish Government} need to find a way.”

“Without financial duties it’s going to mean very little - if they’re not forced to actually put money into education on rights and realisation of rights we are really going to struggle.”

“Human Rights Bill needs to include all the rights and duties set out in UNCRPD, within that needs to be [the] duty to comply, embedded in Scots law making it illegal not to comply, being held to account. There should be penalties, jail the rogue landlords. And access to legal remedy is crucial.”

“There is concern about how everything hangs together. Does this mean some people have more rights than others?”

If the duty to comply does not extend to CEDAW, CRPD and CERD, this will have the effect of compounding discrimination.

22. Do you think certain public authorities should be required to report on what actions they are planning to take, and what actions they have taken, to meet the duties set out in the Bill?

“We welcome the need for progressive realisation for duty bearers to show how rights can be advanced over time.”

“But how will we know if the Scottish Government is using its ‘maximum available resources’ when the budgets are hard to follow, and we don’t get that info in an accessible way?”

“Progressive realisation is great - but let’s measure what matters.”

Defining progressive realisation should involve rights holders. We know from current reporting that what is reported by duty bearers often is unrecognisable to rights holders - a rosy picture can be painted and there is no space for the experience of rights holders.

In the *Our Rights Matter* report, the progressive realisation of Travellers’ rights is set by rights holders, who prioritise the rights at risk, identify the duty bearer responsible and set indicators for change. This example of how duty bearers could report on actions that matter to rights holders is an example of international good practice.

Anastasia Crickley, Chairperson of Minority Rights Group International, Pavee Point Traveller and Roma Centre, and previously Chair of UN Committee on the Elimination of Racial Discrimination comments on the methodology we used in her foreword:

“This clear concise report provides an excellent and accessible overview of a number of key human rights Travellers on the Double Dykes site Perth should be able to realise and of the key international human rights instruments including ICERD which can be invoked in support of this work. It goes on to present a very useful framework which the residents used to examine the main issues that residents experience on the site while also taking the opportunity to give account of some of the things residents value about Double Dykes.

It goes on to state clearly who is responsible for realising rights in five key areas and to set indicators with timeline

around which to monitor progress towards this realisation. In the case of children's right to safety for play and socialising for example, both local duty bearers (Perth and Kinross Council) and international human rights instruments are invoked and a challenging target with an eighteen month timeline is set.

Overall, this report and those who contributed to and wrote it are doing a service not only to their own community but also to other Traveller and non-Traveller communities who will find their approach I believe invaluable. As a previous chair of the UN Committee on the Elimination of Racism I commend all involved, am honoured to write this short introductory note and look forward to sharing your wisdom and approach widely."

This highlights the importance of mandatory reporting of human rights actions, and of rights holders' participation in verifying duty bearers' assertions of progress.

23. How could the proposed duty to report best align with existing reporting obligations on public authorities?

We think that the National Outcomes Framework could be aligned with human rights duties, then authorities could report there.

24. What are your views on the need to demonstrate compliance with economic, social and cultural rights, as well as the right to a healthy environment, via MCOs and progressive realisation?

We totally agree with the need to demonstrate compliance, not as a paper exercise for duty bearers, but demonstrating what real change has been made, and how. The participation of rights holders in this process is vital.

26. What is your view on the proposed duty to publish a Human Rights Scheme?

"A Human Rights Scheme must have 'teeth'."

“Parliament should monitor human rights and show their progress on key HR indicators and show this progress in Parliament.”

The Public Sector Equality Duty has been ineffective at achieving change, so this is not a model to be followed.

5.0 Part 8 of the Bill: Ensuring Access to Justice for Rights-Holders

The key message for the Scottish Government is that rights must be strengthened and that the duties must have “teeth” - there can be no rights without remedy.

Duties need to be:

- Affordable
- Accessible
- Effective
- Accessible
- Supported.

“We’re not asking for the moon. We just want sensible and reasonable prevention and access to justice when things go wrong.”

“Today, people’s everyday experience of their rights is total rubbish. People feel rubbish. We want to feel hope.”

“‘Good’ access to justice would mean that people have a quiet life. By that I mean that there would not be stress, worry, anxiety or shame about claiming your rights. No shame about things that are outwith your control - like living on a low income or living with mould. There would be systems, structures in place for a quick and effective and affordable remedy, right at the point of asking.”

“People would feel heard, not crippled with anxiety, just to get through the fight to get things which are our right anyway. We would have hope. And Scotland would be a more

hopeful place because people's minds would be free from the tough journey to claim our rights."

"Rights should not be exclusive, expensive."

When we asked participants what was needed to improve access to justice, they gave a range of answers including:

- Law centres covering the whole country
- Advocacy services
- Human rights being taught from early years
- People knowing and claiming their rights
- People knowing that public servants as well as being duty bearers are there to serve - and that there is a clear system of remedy
- Every public authority should have info about how to make your rights real at the point of service delivery, like GPs surgeries or schools.

"We need whole range of different remedies- apology, compensation, powers to challenge and change bad decisions made by duty holders."

"It's great that children are now conscious of UNCRC - we should be embedding that consciousness in the general public."

"Change needs to be timely- people's rights are being breached now - we need to act - welcome this coming in next year."

"To take someone to court for human rights - how do we make court action work?"

"Needs to be ways to hold the Government to account that are not "exclusive" by cost, barriers to access to legal support, and timely and dignified."

"There should be a platform where performance against rights can be measured, compared - shouldn't be just constitutional lawyers who can engage with it."

27. What are your views on the most effective ways of supporting advocacy and/or advice services to help rights-holders realise their rights under the Bill?

"There is a big need for citizen advocacy and citizens advice - people are dealing with complex documents. Are there capacity building programmes for BME groups and disabled people's groups- helping those orgs to give first tier advice at the first phase of a legal case?"

"Advice and guidance need to come closer to the people - you are far down the road before a lawyer or adviser becomes involved."

"I think more advocates / Legal Aid / citizen's advice are needed to ensure people really have access to justice - constantly hearing about dearth of Legal Aid in Scotland."

"We are constantly hearing about people encountering long waiting lists at the Citizens Advice Bureau."

"There are less law centres than ever before (none in Perth and Kinross). How do people access justice?"

"Better access to (more) legal advisors / advocates who can help people understand and access their rights."

For access to justice to be effective for rights holders, advocacy and advice services are critical. They must be adequately resourced and have access to information about the implications of the new Bill, in order to advise rights holders. But this information and advocacy should also be linked to law centres, so that human rights violations can be taken to court.

28. What are your views on our proposals in relation to front-line complaints handling mechanisms of public bodies?

"We need a rights-based culture in public authorities - they need to know that they are duty bearers and understand that advancing rights are a good thing."

Effective remedy for human rights violations requires a culture that values human rights in public authorities. Too often, rights holders tell us of a culture where critique is dismissed, silenced or ignored, and that complaints processes are exhausting to tackle. We support that frontline complaints handling in public authorities should be tied to human rights reporting mechanisms. And that remedies should also be reported in human rights terms.

There must be some acknowledgement by Scottish Government how unsatisfactory front line complaints processes are. A common response on receiving a complaint is for a duty holder to get defensive - no support is offered, and an effective remedy is not achieved.

"There's a lot of sympathy at school, but that doesn't translate into rights."

"Complaints procedures are poor - typically the same stereotypical email, "We are really sorry." We attended a roundtable in June with health board, and other orgs. We really did challenge them; the Women's Health Minister saw they were being challenged on human rights terms and they need to act. It's all interconnected, as roads are a factor too in our access to health."

"Time frames for CAMHS and ADHD referrals are 4-5 years. This Bill must ensure there is something built in about redress, something that is meaningful."

There is defeatism. People think "this is just the way it is" and "who do I go to?"

"[Our group] have worked with MRR and SHRC. We wrote to NHS Highland, they dealt with it like a complaint and dodged every question - the EQIA for maternity services was full of inaccurate information, saying there was no high dependency unit in the hospital when there is, calling 200 to 8 nurses a 'small reduction'. No EQIA was written before there were changed to gynaecology services, they are doing it now 6 years later after being challenged by us."

"Caithness women in labour travelling 100 miles, no closer gynaecology service, women's right to health is a huge concern."

30. What are your views on our proposals in relation to scrutiny bodies?

"People need to know how to use scrutiny bodies to make a complaint about human rights issues."

It can be complex and cumbersome accessing justice through scrutiny bodies, who often do not even recognise that they are duty bearers, nor that their duties are protecting human rights.

Scrutiny bodies should be embedding human rights monitoring into their practice. This includes making it easy for rights holders to access reporting mechanisms, being clear how significant performance failure would be addressed - including clear definitions of the 'tipping point' for investigations based on reports from rights holders, and of measuring what matters to rights holders. Progressive realisation should be measured based on

indicators set by rights holders. And must include easy ways to 'follow the money' so that rights holders can examine whether the maximum available resources are being used to uphold rights. Scrutiny bodies should be leading on this.

"Local authorities were given money to spend on school uniforms and they spent it on something else, but no consequences. They need to be accountable."

"Regulatory bodies should be responsible for assessing budgets against human rights duties."

Scrutiny bodies need to be able to hold public authorities to account; so that actions to comply have 'teeth'.

31. What are your views on additional powers for the Scottish Human Rights Commission?

"SHRC's enforcement powers should be increased - ordinary people can't get real help from them and that should change."

"Is there a role to strengthen the Scottish Human Rights Commission to support more people to access/claim their rights?"

We support the call for SHRC to be given extended powers but in itself, the extension of powers won't change anything. The SHRC already has powers that are underused, such as the power to carry out inquiries. Their powers need to be used proactively. Urgent revision and increase of SHRC's working budget is required for them to deliver their powers.

We have heard experiences of rights holders and equality organisations feeling "gatekept" by NHRIs in Scotland - for example, being told by the EHRC or SHRC they do not have a justiciable case, or that a case does not meet their prioritisation criteria. These decisions are unchallengeable, and this is not

good enough. This practice is letting down marginalised groups and contributing to a lack of equality and human rights case law in Scotland.

Rights holders should not have to use specialist, national services to enforce their rights. The aspiration should be that there are a variety of spaces where rights holders can learn about, be advocated for, and enforce their rights.

Ultimately, there will be situations where a judicial process is required and rights holders should be able to access free or affordable, quality advice and representation from high street solicitors funded through Legal Aid as a matter of public policy.

35. Do you agree or disagree that existing judicial remedies are sufficient in delivering effective remedy for rights-holders?

“Scottish Government is trying to push through the Legal Services Regulatory Bill- all the legal profession and some universities have come out against this. This will restrict access to justice.”

“Training for sheriffs in human rights needed.”

“Very difficult to find a solicitor that specialises in human rights. Human Rights work doesn’t make money.”

6.0 Part 9 of the Bill: Implementing the New Scottish Human Rights Act

“Human rights budgeting is needed - budgets that prioritise and put Human Rights at their heart could make a significant difference. So used to the rhetoric being at an all-time high, Human Rights in lots of laws and policies, and huge gap between that and reality.”

“We need to build a human rights culture where accessing information about budgets is not so difficult - make it easy to follow the money.”

“I think it's a well-intentioned piece of legislation, however, as we have seen with equality, hate crime and anti-discrimination laws - legislation is not enough. It needs to be grounded in education for all, with public buy in and it needs to be robustly enforced.”

The gap between rhetoric and implementation of the Bill must be closed, so that rights holders experience their human rights in “small places, close to home” where their rights have most meaning.

Building the capacity of human rights in public authorities is one thing, but changing the culture towards one of advancing human rights is another. This law has the potential to transform Scotland’s human rights culture.

But it will have to be resourced adequately, and investment will need to be prioritised significantly in order for this to deliver real change.

Using human rights principles in practice, will ultimately save money for public authorities, because services will uphold the rights of people and will deliver change for the people who need it most.

Human rights budgeting is a tool that can assist the national conversation about what matters to rights holders and talking about the national, and local budgets in a way where people’s rights are the central point for fiscal decision making is one way that implementation of human rights can become real.